IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

Crl.MC.No. 2303 of 2006()

CC.76/2003 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

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PETITIONER: 2ND ACCUSED:

R.M. SAILESH KUMAR, S/O. KARUNAKARAN,
PREMIER HOUSE, PUTHIPARA, KOZHIKODE (SOUPARNIKA,
PAROPPADI, MALAPARAMBU P.O., KOZHIKODE DISTRICT).

BY ADV. SRI.WILSON URMESE

RESPONDENTS: COMPLAINANT,ACCUSED 1 & 3 AND STATE:

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1. GADATHARAN, S/O.BANU PRAKASH,
3/604, MANIPURAM, NADAKAVU P.O.,KOZHIKODE DISTRICT

2. R.M.SUDARSAN, S/O.KARUNAKARAN,
CHILANKA, CHEVARAMBALAM, P.O. KOTTULI,
KOZHIKODE DISTRICT.

3. R.M. AJEENA, W/O.R.M.SUDARSAN,
CHILANKA, CHEVARAMBALAM, P.O. KOTTULI,
KOZHIKODE DISTRICT.

4. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

(Respondents 2 & 3 are deleted from the array of parties as per order dt.04.2.2006 in the Crl.M.C.)

BY ADV. SMT.LEKHA SURESH
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.2303 OF 2006

Dated this the 4th day of December, 2006.

ORDER

Respondents 2 & 3 have not been served. They are unnecessary co-accused in this petition filed by the 2nd accused for quashing all proceedings against him. They are deleted from the array of parties.

2. The petitioner is the 2nd accused in a prosecution launched against him and two others by the 1st respondent/complainant herein. Proceedings have been initiated on the basis of a private complaint. In the private complaint, the petitioner alleges that 3 accused persons (the petitioner herein-the 2nd accused, his brother-the 1st accused and his sister-in-law-the 3rd accused the wife of the 1st accused) are guilty of offences punishable inter alia under Section 420 I.P.C.

3. The short contention of the petitioner is that the allegations in the complaint, even if accepted in its entirety, do not constitute any offence against the petitioner. In these circumstances, it is prayed that the proceedings in so far as it relates to the petitioner may be quashed.

4. I have been taken through the relevant averments in the complaint in detail. I find merit in the submission of the learned counsel for the petitioner that no worthwhile allegations whatsoever have been raised against the petitioner herein, ie. the 2nd accused. The only relevant averment which appears against the petitioner is the averment in para.6, which shows that the petitioner has the civil liability to return the amount deposited by the complainant with the company on the representation of the 1st accused. Of course, in para.9 it is further stated that the petitioner herein is the director of the company and the petitioner and his brother had acted in furtherance of their common intention. Absolutely no specific or tangible allegations have been raised against the petitioner.

5. In these circumstances, I am satisfied, that in the total absence of any worthwhile allegation raised against the petitioner, the petitioner does not deserve to endure the trauma of his undeserved prosecution. It will be a traversity of justice if the petitioner were permitted to be vexed by such proceedings initiated against him.

6. In the result:

i) This Crl.M.C is allowed;

ii) C.C.No.76 of 2003 pending before the Chief Judicial Magistrate, Kozhikode in so far as it relates to the petitioner is hereby quashed.

R.BASANT
JUDGE

rtr/